"(a) The insured only.

Provided that the person driving is permitted in accordance with the licensing or other laws or regulations to drive the motor vehicle or has been so permitted *and* is not disqualified by order of a court of law or by reason of any enactment or regulations in that behalf from driving a motor vehicle."

The policy is in respect of the period 1st April, 1971 to 31st March, 1972 (both days inclusive).

PW7, Sgt. 4359 stated in his evidence as follows:

"He had an insurance. He showed me an expired driving licence.... It was a provisional driving licence PDL 593154."

The evidence of this witness read with Exhibit P5, the insurance policy, clearly shows that on 21st November, 1971 which is the material date, the accused was in fact covered by a policy of insurance in respect of motor cycle No. BT 8622 which is the vehicle in question.

Section 79(j) of the Road Traffic Ordinance reads as follows: —

"Where a certificate of insurance has been delivered under subsection (4) of section 75 of this Ordinance to the person by whom a policy has been effected, so much of the policy as purports to restrict the insurance of the persons insured thereby by reference to any of the following matters —

....

(j) the driver of the motor vehicle at the time of the accident not holding a licence to drive or not holding a licence to drive the particular motor vehicle;

....

shall, as respect such liabilities as are required to be covered by a policy under paragraph (b) of subsection (1) of section 75 of this Ordinance, be of no effect."

It must be pointed out here that section 79 of the Road Traffic Ordinance was amended with effect from 15th January, 1968 by adding subsections (i), (j) and (k). The effect of the amendment in regard to subsection (j) as I understand it, is that even if the driver of the motor vehicle at the time of the accident is not holding a driving licence, the insurers are precluded from avoiding liabilities in respect of third parties so long as the insurance policy is in force on the date of the accident.

The learned Deputy Public Prosecutor cited *Jones* v. *Welsh Insurance Corporation, Ltd.*[1] In that case the insurance policy covered the use of the car for "social, domestic and pleasure purposes" and for use "in connection with his business or profession." The insured in that case was a motor mechanic and was described as such in the Schedule, but in his spare time farmed a few sheep. At the time of the accident, which caused the injuries, the car was being used to convey some sheep. In that case the court held that at the time of the accident his car was not being used in connection with his business of a motor mechanic, but for the carriage of goods in connection with a business other than that stated in the policy and as such the plaintiff could not recover in the action.

I am in entire agreement with *Jones* v. *Welsh Insurance Corporation Ltd.*, but I cannot see how the ruling in that case can be of any relevance in the present appeal, for here we are not dealing with a motor car being used for a purpose other than for which it was insured.

In *John* v. *Humphreys*[2] it was held that where the obtaining of a licence was by statute a prerequisite to the doing of some act, the onus was on the person doing the act to prove that he has a licence, it being a fact peculiarly within his own knowledge. Thus it was not for the prosecution to prove that the defendant was not the holder of a driving licence and in the absence of proof by the defendant that he was the holder of a licence, he was convicted. This ruling was also applied in *Devey* v. *Towle*[3] where it was held that the failure to produce the test certificate was clear contravention of section 162(1) and the defendant's difficulty to produce went to mitigation. The court also ruled that as to insurance, the burden of showing that the driver was insured rested on the driver.

I entirely agree that the burden of showing that the appellant in the present case was insured would have rested on him, but as I already stated earlier, the prosecution has by their own evidence and by producing Exhibit P5, clearly shown to the satisfaction of the court that the appellant was duly covered by a policy of insurance at the material time. The burden therefore never shifted to the appellant and as such he was rightly acquitted by the lower court.

I have also read the case of *T. S. B. Maniam* v. *Public Prosecutor.*[4] In that case Horne J. ruled that it was for the prosecution to prove that the policy was not in fact in force at the time of the user alleged. In the light of the decision in *John* v. *Humphreys* and *Davey* v. *Towle* it is apparent that *T. S. B. Maniam* v. *Public Prosecutor* is no longer good law.

What the position might have been before 15th January 1968 *i.e.* before section 79(j) of the Road Traffic Ordinance came into force is not a matter for me to go into for the purposes of this appeal. Section 79(j) makes it clear that although the appellant had no valid driving licence on the date in question, the insurance company are precluded from repudiating liability in respect of third party risks. For this reason I must rule that the appellant was duly covered by a policy of insurance on 21st November, 1971. I will therefore dismiss the appeal of the Public Prosecutor from the order of acquittal of the appellant on the third charge and the order of acquittal is confirmed.

Appeal dismissed.

Solicitors: *Vohrah & Tan Chee Lan.*

PUBLIC PROSECUTOR v. TAN TONG PHIEN & ANOR.

[A.Cr.J. (Pawan Ahmad J.) December 4, 1973]
[Malacca — Criminal Appeal No. 27 of 1973]

Road Traffic — Weighbridge — Person stopping vehicle not precluded from weighing the vehicle, if he is officer in charge of weighbridge — Road Traffic Ordinance, 1958, ss. 53 and 143.

The respondents had been acquitted on charges of carrying on a lorry a load in excess of the permitted weight. The lorry in this case was stopped by the Enforcement Officer of the R.I.M.V. Malacca, who was also at the material time the officer in charge of the weighbridge. The learned magistrate relying on the case of *Maasah bin Deraman* v. *Public Prosecutor*[1] acquitted the accused. The Public Prosecutor appealed.

Held: there is nothing wrong if the vehicle is weighed by the same officer who stops it and takes it to the weighbridge provided that he is the officer in charge of the weighbridge. The weighing of the vehicle was properly carried out in this case and the appeal must therefore be allowed.

Case referred to:-

(1) *Maasah bin Deraman* v. *Public Prosecutor* [1973] 2 M.L.J. 180.

CRIMINAL APPEAL.

Abdul Murad bin S. Ismail (Deputy Public Prosecutor) for the appellant.

F. H. D'Cruz for the respondent.

Pawan Ahmad J. (delivering oral judgment): The Public Prosecutor appealed from the order of acquittal of the Magistrate's Court and the substantial grounds of appeal in brief are as follows: —

i. That the learned president erred in law and in fact in stating that P.W.1 is not a person in charge of the weighbridge and therefore not authorised to weigh the vehicle in question;

ii. That the learned president erred in interpreting the judgment in Malacca Criminal Appeal No. 26 of 1972. (*Maasah bin Deraman* v. *Public Prosecutor*[1]).

As to ground (i) above there is the clear unchallenged evidence of PW1, Jaffar bin Kulub, Enforcement Officer of the R.I.M.V., Malacca, who stated that he was at the material time officer in charge of the weighbridge. From the records it would appear that not even one question was directed at this witness in cross-examination to challenge this testimony. I must therefore rule that the learned President should have found as a fact that PW1 was the officer in charge of the weighbridge.

As to the second ground, I might state here that in *Masaah bin Deraman* v. *Public Prosecutor*[1] the vehicle was stopped by a police sergeant who was only authorised to stop and take the vehicle to the weighbridge under section 53(1) of the Road Traffic Ordinance. There was no evidence in that case that the police sergeant was also the officer in charge of the weighbridge. It is because of this I ruled that his duties did not extend to the weighing of the vehicle. The facts in this case are different, for not only was PW1 empowered under section 53 to stop vehicles and take them to the weighbridge, he is also the duly appointed officer in charge of the weighbridge. In my judgment in *Maasah bin Deraman* v. *Public Prosecutor* I did not mean to rule that the officer who stops the vehicle and takes it to the weighbridge is precluded from weighing the vehicle. There is nothing wrong if the vehicle is weighed by the same officer who stops and takes it to the weighbridge provided that he is the officer in charge of the weighbridge. I must therefore rule that in the present case the weighing of the vehicle was properly carried out.

Counsel for the respondents argued before me that the certificate in respect of the weighbridge was served only on the owner of the vehicle and not on the driver. I must point out that section 143(b) of the Road Traffic Ordinance is of no relevance in this case and therefore has no application in proceedings relating to the weight of any vehicle. Section 143(7) stipulates that in proceedings relating to the weight of any vehicle the certificate "shall be accepted by any court as *prima facie* proof of the facts certified in such certificate." As I see it, there is no requirement under the Road Traffic Ordinance that such certificate should be served either on the owner or the driver of the vehicle. I am therefore unable to accept the submission of the counsel for the respondents on the question of service of the certificate.

As to exhibit P3, it is clear that it is both a certificate and receipt in one piece. This exhibit though not dated has a date "13th August, 1971" printed on it. This in my finding is the date on which payment in respect of the examination of the weighbridge was made. In addition to this there is the evidence of PW1 who stated that the weighbridge was checked on 13 August 1971. I must therefore find that the weighbridge was duly checked and examined on 13 August 1971, well within the period of eight months stipulated under section 143(7)(a) of the Road Traffic Ordinance.

It may be relevant to state here that in regard to the weighing of vehicles, all that the person in-charge of the vehicle is entitled to is a duplicate or copy of the weight certificate in respect of the weighing of a vehicle if so required by him as provided under section 53(2) of the Road Traffic Ordinance.

The appeal of the Public Prosecutor must therefore be allowed and the order of acquittal of both the respondents set aside. Magistrate's Court Summons cases Nos. 1656 and 1657 of 1972 will both be remitted for retrial before another magistrate.

Appeal allowed.

Solicitors: *Tay Leong Siak & Co.*

PUBLIC PROSECUTOR v. MOHAMAD RAMLY

[A.Cr.J. (Mohamed Azmi J.) December 4, 1973]
[Kuala Lumpur — Criminal Appeal No. 147 of 1973]

Criminal Law and Procedure — Sentence — Charge of forgery and using a forged document — Plea of guilty — Accused bound over — Sentence manifestly inadequate — Criminal Procedure Code (F.M.S. Cap. 6), s. 173A.

The appellant had pleaded guilty to two charges of forging a M.C.E. certificate and of using the said forged document. He had no previous record and after considering a probation report, the learned magistrate bound him over under section 173A of the Criminal Procedure Code. The Public Prosecutor appealed on the ground that the sentences were inadequate.

Held: the offences in this case should not be considered lightly and public interest would not be served by discharging the offender conditionally on his entering into a bound of good behaviour. The sentences were manifestly inadequate and should be enhanced to a fine of $500 in default six months imprisonment on the first charge and a fine of $250 in default three months imprisonment on the second charge.

CRIMINAL APPEAL.

Lamin bin Haji Mohamad Yunos (Deputy Public Prosecutor) for the appellant.

Respondent in person.

Mohamed Azmi J. (delivering oral judgment): The accused who was a trainee in the Police College at Kuala Kubu Bahru pleaded not guilty to two charges of forgery. But after three of the prosecution witnesses had given evidence on July 16, 1973, he pleaded guilty to the amended first charge which reads: